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**SUBSTITUTE SENATE BILL 6202**

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**State of Washington                      60th Legislature                      2008 Regular Session**

**By** Senate Government Operations & Elections (originally sponsored by Senators Sheldon and Rasmussen)

READ FIRST TIME 02/07/08.

1            AN ACT Relating to false and defamatory statements about candidates  
2 for public office; amending RCW 42.17.530; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.** (1) The concurring opinion of the Washington  
5 state supreme court in *Rickert v. State, Public Disclosure Commission*,  
6 161 Wn.2d 843, . . . P. 3d . . . (2007) found the statute that  
7 prohibits persons from sponsoring, with actual malice, political  
8 advertising and electioneering communications about a candidate  
9 containing false statements of material fact to be invalid under the  
10 First Amendment to the United States Constitution because it posed no  
11 requirement that the prohibited statements be defamatory.

12            (2) It is the intent of the legislature to amend chapter 42.17 RCW  
13 to find that a violation of state law occurs if a person sponsors false  
14 statements about candidates in political advertising and electioneering  
15 communications when the statements are made with actual malice and are  
16 defamatory.

17            (3) The legislature finds that in such circumstances damages are  
18 presumed and do not need to be established when such statements are  
19 made with actual malice in political advertising and electioneering

1 communications and constitute libel or defamation per se under RCW  
2 9.58.010 (1) or (3). The legislature finds that incumbents,  
3 challengers, voters, and the political process will benefit from  
4 vigorous political debate that is not made with actual malice and is  
5 not defamatory.

6 (4) The legislature finds that when such defamatory statements  
7 contain a false statement of material fact about a candidate for public  
8 office they expose the candidate to contempt, ridicule, or reproach and  
9 can deprive the candidate of the benefit of public confidence, or  
10 prejudice him or her in his or her profession, trade, or vocation. The  
11 legislature finds that when such statements falsely represent that a  
12 candidate is the incumbent for the office sought when in fact the  
13 candidate is not the incumbent they deprive the actual incumbent and  
14 the candidates of the benefit of public confidence and injure the  
15 actual incumbent in the ability to effectively serve as an elected  
16 official. The legislature further finds that defamatory statements  
17 made by an incumbent regarding the incumbent's challenger may deter  
18 individuals from seeking public office and harm the democratic process.  
19 Further, the legislature finds that when such statements make, either  
20 directly or indirectly, a false claim stating or implying the support  
21 or endorsement of any person or organization when in fact the candidate  
22 does not have such support or endorsement, they deprive the person or  
23 organization of the benefit of public confidence and/or will expose the  
24 person or organization to contempt, ridicule, or reproach, or injure  
25 the person or organization in their business or occupation.

26 (5) The legislature finds that defamatory statements, made with  
27 actual malice, damage the integrity of elections by distorting the  
28 electoral process. Democracy is premised on an informed electorate.  
29 To the extent such defamatory statements misinform the voters, they  
30 interfere with the process upon which democracy is based. Such  
31 defamatory statements also lower the quality of campaign discourse and  
32 debate, and lead or add to voter alienation by fostering voter cynicism  
33 and distrust of the political process.

34 **Sec. 2.** RCW 42.17.530 and 2005 c 445 s 10 are each amended to read  
35 as follows:

36 (1) It is a violation of this chapter for a person to sponsor with

1 actual malice a statement constituting libel or defamation per se under  
2 RCW 9.58.010 (1) or (3) under the following circumstances:

3 (a) Political advertising or an electioneering communication that  
4 contains a false statement of material fact about a candidate for  
5 public office(~~(. However, this subsection (1)(a) does not apply to~~  
6 ~~statements made by a candidate or the candidate's agent about the~~  
7 ~~candidate himself or herself));~~

8 (b) Political advertising or an electioneering communication that  
9 falsely represents that a candidate is the incumbent for the office  
10 sought when in fact the candidate is not the incumbent;

11 (c) Political advertising or an electioneering communication that  
12 makes either directly or indirectly, a false claim stating or implying  
13 the support or endorsement of any person or organization when in fact  
14 the candidate does not have such support or endorsement.

15 (2) It is not a violation of this section for a candidate or his or  
16 her agent to make statements described in subsection (1)(a) or (b) of  
17 this section about the candidate himself or herself because a person  
18 cannot defame himself or herself. It is not a violation of this  
19 section for a person or organization referenced in subsection (1)(c) of  
20 this section to make a statement about that person or organization  
21 because such persons and organizations cannot defame themselves.

22 (3) Any violation of this section shall be proven by clear and  
23 convincing evidence. If a violation is proven, damages are presumed  
24 and do not need to be proven.

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